FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOSEPH WILLIAM HAGAN (CRD No. 1980623), Respondent.	Disciplinary Proceeding No. 2006003825001 **HEARING PANEL DECISION** Hearing Officer – SW Date: December 19, 2008

For violating Conduct Rule 2110 by causing his commissions to be paid to his spouse to avoid an IRS garnishment order, Respondent is barred from associating with any member firm in his capacity as a general securities principal, suspended for three months in all capacities, and fined $5,000. For violating Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his tax liens on his Form U4s, Respondent is concurrently suspended for three months from associating with any member firm in all capacities and fined $5,000.

Appearances

Noel C. Downey, Esq., Principal Regional Counsel, and Michael J. Newman, Esq., Senior Regional Counsel, Woodbridge, NJ, appeared on behalf of the Department of Enforcement.

Martin P. Russo, Esq., and Orlee Goldfeld, Esq., Butzel Long P.C., New York, NY, appeared on behalf of Joseph William Hagan.

DECISION

I. PROCEDURAL HISTORY

A. Complaint and Answer

On December 31, 2007, FINRA's Department of Enforcement ("Enforcement") filed a two-count Complaint against Respondent Joseph William Hagan ("Respondent").

Count one of the Complaint alleges that Respondent violated Conduct Rule 2110 by arranging for Grayson Financial LLC ("Grayson Financial" or the "Firm") to pay his April 2006 commissions to his current spouse, an unregistered person who was also employed at Grayson Financial, in an attempt to avoid an IRS garnishment order.

Count two of the Complaint alleges that Respondent violated Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose IRS tax liens on several 2006 Form U4s and Form U4 amendments.

Respondent admits the allegations of count one of the Complaint. Respondent denies the allegations of count two of the Complaint, except that he admits that he received a Notice of Federal Tax Lien and admits that on November 16, 2006, he submitted an amended Form U4 to FINRA in which he disclosed the existence of an IRS tax lien. Respondent denies any intentional misconduct.

B. Hearing

The Hearing Panel, consisting of two members of the District 9 Committee and a Hearing Officer, conducted a Hearing in Woodbridge, New Jersey, on June 24, 25, and 26, 2008.[1] The parties subsequently filed post-hearing briefs in October 2008, which the Hearing Panel reviewed and considered in making their determinations.

The Hearing Panel finds that Enforcement met its burden of showing by a preponderance of the evidence that Respondent (i) violated Conduct Rule 2110 by acting unethically when he caused his Firm to pay his commissions to his spouse, an unregistered person, to avoid an IRS garnishment order, and (ii) violated Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his IRS tax liens on his Form U4s.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Facts

1. Respondent

Respondent first became registered as a general securities representative on October 25, 1989. (CX-1, pp. 14, 17). He became registered as a general securities principal on October 5, 1994. (CX-1, p. 11). Between October 1989 and August 1998, Respondent was registered with several broker-dealers, *i.e.*, Kirlin Securities Inc., Citigroup Global Markets, Inc., Lehman Brothers Inc., and M.S. Farrell & Company, Inc. (CX-1, p. 17).

In August 1998, Respondent became a part owner of, and associated with, Grayson Financial. (Tr. p. 681; CX-1, p. 8). Respondent was registered as a general securities representative and principal with Grayson Financial from September 10, 1998 until June 6, 2006, when the Firm closed and filed a BDW to withdraw from FINRA membership.[2] (CX-1, p. 8; Tr. pp. 683, 705).

In June 2006, Respondent became registered briefly with Maxim Group LLC ("Maxim") and was subsequently registered with Joseph Stevens & Company, Inc. ("Joseph Stevens") from June 2006 until April 17, 2008. (CX-1, pp. 3, 7, 10). When Enforcement filed its Complaint on December 31, 2007, Respondent was registered as a general securities representative and principal with Joseph Stevens. (CX-1, p. 7).

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[1] "Tr." refers to the transcript of the Hearing held on June 24, 25, and 26, 2008; "CX" refers to the exhibits submitted by Enforcement; and "RX" refers to the one exhibit submitted by Respondent.

[2] Respondent's registrations at Grayson Financial were terminated without the filing of a Form U5. (CX-1, p. 8).

Respondent is currently registered as a general securities representative with Fordham Financial Management, Inc. (CX-1, p. 6).

2. Respondent's Tax Debt and Compensation

At the beginning of 2003, Respondent undertook a substantial debt to purchase a home to fulfill the wishes of his dying wife.[3] (Tr. pp. 147, 207-208, 1219-1220). Respondent testified that because of the burden of medical bills, the large mortgage,[4] and the shrinking income from Grayson Financial, he underpaid his personal income taxes owed on the 2003 joint tax return with his deceased wife. (Tr. p. 684; CX-3, p. 1). Respondent also was unable to pay all his personal income taxes owed for 2004. (Tr. pp. 684-685).

In June 2005, Respondent re-married. (Tr. pp. 1221-1223; CX-9, p. 9, subpages 31, 33).

In October 2005, Respondent retained JK Harris, an accounting firm, to assist him in obtaining an installment plan with the Internal Revenue Service ("IRS") after he realized that he did not have the capacity to pay his back taxes and maintain his expenses. (Tr. pp. 685-686, 704; CX-16A, p. 9). JK Harris directed Respondent to forward to them any correspondence received from the IRS, which he said he did. (Tr. pp. 722, 726-727). Assuming that JK Harris was handling the situation, Respondent's focus turned from his tax problems to other issues. (Tr. pp. 822-823).

[3] In January 2003, ten days after she moved into her new house, Respondent's wife died of cancer leaving Respondent the sole parent of three-year old twins. (Tr. pp. 1215, 1220; CX-9, p. 9, subpage 33).

[4] For the down payment on the house, Respondent borrowed $100,000 from his father-in-law and $150,000 from Mr. JL, also a partner in Grayson Financial. (Tr. pp. 1217-1218). The purchase price of the house was $1.39 million and the remaining mortgage and the value of the house are both about $1.1 million. (Tr. p. 917).

On April 14, 2006, the IRS prepared a $105,244.41 Notice of Federal Tax Lien Filing ("Notice of Lien") against Respondent in connection with his unpaid taxes for the 2003 tax year. (CX-10A). The IRS sent the Notice of Lien to Respondent and his former wife (now deceased) at Respondent's current address, via certified mail dated April 25, 2006, and filed it with Office of the County Clerk, Monmouth, in Freehold, NJ on April 25, 2006. (CX-3; CX-19). In correspondence to a FINRA staff member, Ms. KT, the IRS revenue agent assigned to Respondent, wrote that the initial April 2006 Notice of Lien was returned unclaimed.[5] (CX-18A).

On May 1, 2006, Ms. KT mailed a Notice of Levy on Wages, Salary, and Other Income ("Garnishment Order") with regard to Respondent to Grayson Financial. (CX-4). Ms. NM, Grayson Financial's office manager, received the Garnishment Order in early May 2006, made copies, and immediately provided the copies to Respondent and to Paychex, Grayson Financial's outside payroll vendor.[6] (Tr. pp. 100, 111, 114, 117). Ms. NM believed at the time that the Garnishment Order was a personal matter, and accordingly, she did not disclose receipt of the Garnishment Order to any other Grayson Financial partner, or to Mr. KH, Grayson Financial's Chief Compliance Officer, prior to the Firm closing its operations. (Tr. pp. 118, 153-154, 162-163, 180, 202).

[5] In a letter dated November 22, 2006, Respondent provided FINRA staff with copies of the Notice of Lien and the April 25, 2006 certified letter. (CX-10A). Accordingly, there is no dispute that Respondent received the Notice of Lien and the April 25, 2006 certified letter. However, there is no clear evidence establishing when Respondent received the Notice of Lien and the certified mail. (Tr. pp. 824-825). In addition, Respondent testified that his wife routinely left mail in a box in the garage for him to "rummage through" later. (Tr. pp. 750-751, 1009).

[6] Paychex could not process the Garnishment Order for the May 2006 payroll. (Tr. p. 117). Ms. NM testified that a Paychex staff member told her, "Well, don't worry about it. We can't get it in for this payroll anyway." (*Id.*). Ms. NM had worked at Grayson Financial since its inception and generally reported to Respondent and Mr. JL. (Tr. pp. 98, 100).

The May 1, 2006 Garnishment Order explicitly listed two unpaid assessments, *i.e.*, $105,294.41 for the tax year ended December 31, 2003, and $184,957.39 for the tax year ended December 31, 2004, totaling $313,997.82, after including interest and late payment penalties through May 31, 2006. (CX-4, p. 1). The Garnishment Order stated "The Internal Revenue Code provides that there is a lien for the amount shown above." (*Id.*). The Garnishment Order directed the Firm to turn over Respondent's wages and salary that had been earned but not paid, as well as any wages and salary earned by Respondent in the future. (*Id.*).

On May 4, 2006, the IRS seized $3,575.69 from Respondent's Bank of America checking account via a levy. (Tr. p. 675; CX-5). Respondent testified that his spouse alerted him to the problem after she was unable to write a check for groceries.[7] (Tr. pp. 1233-1234).

May and June 2006 appear to have been incredibly stressful months for Respondent. In addition to the tax issues, Respondent's Firm was having increasing financial difficulty because of margin calls on securities, in which clients of Grayson Financial were heavily invested. Respondent testified that the margin calls ultimately led the Firm to fail to meet its net capital requirement and the Firm's closure. (Tr. pp. 70-71). Respondent also testified that his spouse was pregnant and very anxious about the life of the baby, and Respondent's seriously ill mother-in-law, who was continually in and out of the hospital, moved into their home.[8] (Tr. pp. 951, 1223, 1225, 1239).

In May 2006, Respondent telephoned Ms. KT and began directly negotiating with

[7] On May 5, 2006, the same day that Respondent's spouse wrote a check to Foodtown, Respondent's bank account showed a negative balance because of the IRS seizure on May 4, 2006. (CX-5, p. 2).

the IRS to resolve his tax problems.[9] (Tr. pp. 735, 827, 1273). In May 2006, Respondent spoke to Ms. KT and believed that he had resolved the garnishment and the levy. (Tr. pp. 769-770, 876). Respondent testified that Ms. KT said, "No, that shouldn't have happened," and that she would "clean it up." [10] (Tr. pp. 770, 995).

Respondent arranged for his commission earnings for April 2006, which were payable on May 15, 2006, to be directed to his spouse, an unregistered person.[11] (Tr. pp. 130, 668). Respondent was able to do so because one of his duties as a part-owner and principal of Grayson Financial was to make payroll decisions. (Tr. pp. 101, 106; CX-9, p. 4 at subpages 10-11). Respondent produced the "production stats" for the Firm's registered personnel, from which commissions earnings were paid.[12] (*Id.*).

After receiving the Garnishment Order from Ms. NM, Respondent wrote on the April 2006 production stats that his commissions for the month of April should be paid to his spouse.[13] (CX-2B; Tr. pp. 110-111). The production stats, which were prepared in early May 2006, were then forwarded to Ms. NM. (Tr. p. 103). Ms. NM orally provided the payroll information to Paychex. (Tr. pp. 103-104, 106). Based on Ms. NM's oral

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[8] Respondent testified that at the time there was a concern that his wife could suffer a miscarriage. (Tr. pp 1235, 1239).

[9] Respondent testified that he was able to contact Ms. KT because in the spring of 2006, she had left her business card in the door at his home. (Tr. pp. 782-784, 827, 1303).

[10] The levy on his bank account was lifted and no garnishment orders were sent when he was employed by Maxim or Joseph Stevens. (Tr. pp. 918, 947, 953-954, 977).

[11] In 2006, Respondent's wife worked part-time at Grayson Financial in operations at an hourly wage. (Tr. pp. 125-126, 942).

[12] Payroll production stats were the internal payroll log showing each broker's name, commissions, payout percentage, any charges, and the gross amount owed. (Tr. pp. 100-101).

[13] There was no evidence presented that Ms. NM was aware of the ramifications of complying with Respondent's order to direct commissions (i) to a non-registered person and/or (ii) away from a person who is the subject of a garnishment order.

recitation of the production stats, Paychex produced a payroll journal, dated May 10, 2006, indicating a gross payment to Respondent's spouse of $9,662.00, and a net payment of $8,922.86. (CX-6; Tr. pp. 133-134). Respondent deposited the $8,922.86 check payable to his spouse, dated May 15, 2006, into her bank account. (CX-7; CX-9, p. 18 at subpage 67). Respondent testified that he told Ms. KT of his actions, and she took no action against him.[14] (Tr. p. 1240).

Knowing that he planned to pay his back taxes, Respondent does not dispute that, to pay family bills, he directed his April 2006 commissions be paid to his wife in May 2006 to avoid the Garnishment Order. (Tr. pp. 544-545, 668, 1287). There was no June 2006 payroll for the May 2006 production stats. (Tr. p. 177). On June 6, 2006, Grayson Financial ceased operations.

On June 5, 2006, the IRS mailed a Final Demand for Payment ("Final Demand") to Grayson Financial. (CX-8). Mr. KH, the compliance officer, received the Final Demand, which referred to the Garnishment Order.[15] (CX-8; Tr. p. 52). After speaking with Ms. NM on June 7, 2006, the day after the Firm closed, Mr. KH learned of the prior Garnishment Order, and Respondent's instruction to pay his April 2006 commissions to his spouse. (Tr. pp. 56, 138-139). Mr. KH did not discuss the matter with Respondent, and did not provide Respondent with a copy of the Final Demand. (Tr. p. 73).

[14] Respondent testified that his conduct was not an issue with Ms. KT "as long as I filed my taxes on time, there was a joint return." (Tr. p. 1240).

[15] Ms. NM wrote on the Final Demand "No longer employed by Grayson Financial LLC." (CX-8; Tr. p. 155).

On June 7, 2006, Mr. KH called FINRA staff regarding the matter indicating that he had just become aware of the issue.[16] (Tr. pp. 73, 531). FINRA staff began an investigation to determine whether commissions had been paid to an unregistered person. (Tr. pp. 582, 632).

On November 10, 2006, Respondent appeared at an on-the-record interview with FINRA staff. (Tr. p. 541). At the interview, after initially stating that he had no liens against him, Respondent admitted that "there may be a lien on my house until I finish working out a payment schedule with the IRS. I believe until that's cleared up, there still may be a lien on my house." (CX-9, pp. 3, 12 at subpages 9, 44-45). Respondent testified that he was not aware of an obligation to disclose liens on his Form U4. (Tr. p. 847).

B. Respondent Engaged in Unethical Behavior

The first cause of the Complaint alleges that Respondent violated Conduct Rule 2110 when he attempted to evade the Garnishment Order by disguising his Grayson Financial commissions as purported earnings of his wife.

Conduct Rule 2110 states, "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."[17] Because Conduct Rule 2110 "is not limited to rules of legal conduct but rather . . . it states a broad ethical principle,"[18] it may be violated by unethical conduct, independent of a violation of any other law, regulation, or rule.

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[16] On June 20, 2006, Mr. KH sent copies of Grayson Financial checks payable to Respondent's spouse, the Garnishment Order, and the Final Demand to FINRA staff. (Tr. pp. 533-534).

[17] Although Rule 2110 refers only to members, Rule 0115 provides: "Persons associated with a member shall have the same duties and obligations as a member under these Rules."

[18] *Timothy L. Burkes*, 51 S.E.C. 356 (1993), *aff'd mem., Burkes v. SEC*, 29 F.3d 630 (9th Cir. July 24, 1994).

In an effort to retain funds to meet his family expenses, Respondent attempted to shield his earnings from the Garnishment Order by redirecting his commissions to his spouse, an unregistered person. Respondent testified that it was more important to provide for his family than to obey the Garnishment Order. The Hearing Panel finds that Respondent acted unethically when he intentionally decided to take advantage of his position as a principal of the Firm to circumvent the Garnishment Order by causing his Firm to pay his transaction-based commissions to a non-registered person.[19] The Hearing Panel finds that Respondent's efforts to evade the Garnishment Order are comparable to efforts to evade a FINRA suspension order.[20]

Accordingly, the Hearing Panel finds that Respondent violated Conduct Rule 2110 by intentionally engaging in unethical conduct when he directed his commission earnings be paid to his spouse, an unregistered person, after receipt of the Garnishment Order, as alleged in count one of the Complaint.

C. Respondent Failed to Disclose His IRS Tax Liens

1. Respondent Bears Responsibility for Filing False Form U4s and Form U4 Amendments

The Hearing Panel finds that after he became aware of the Garnishment Order and the levy on his bank account, on or about May 5, 2006, Respondent knew or should have known of the IRS tax lien on his property.

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[19] FINRA has stated that unregistered persons are regarded as employees of a member and should not be compensated on any basis other than a salary or hourly wage. *See NTM* 88-50 available at http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=1153&element_id=912&highlight=88-50#r1153.

[20] *Dep't of Enforcement v. Kirsch*, Complaint No. CAF040025, 2005 NASD Discip. LEXIS 30 (Apr. 15, 2005) (finding that respondent violated Conduct Rule 2110 when, despite a pending suspension order, respondent acted as a supervisor because he believed it was more important to provide guidance to his staff than to honor his supervisory suspension).

In late May 2006, Respondent and an associate met with a Maxim representative to explore the possibility of working for Maxim. (Tr. pp. 901-902, 1145). Ultimately, Respondent executed a Form U4 on June 8, 2006 with Maxim. (CX-12A, pp. 1-18). Using the information in the CRD system, Maxim's office completed the Form U4 for Respondent and sent it to Respondent for his signature. (Tr. pp. 248-249, 271). The Form U4 did not disclose any IRS tax liens. (CX-12A, p. 14).

Respondent testified that he indicated to Maxim management that he had "an IRS problem and a massive debt," but no one asked him to provide specific details about his tax problem. (Tr. pp. 840, 1248). Respondent testified that he did not tell any Maxim personnel that he had a tax lien. (Tr. pp. 254, 840, 924). Respondent testified credibly that, with everything happening in his life at the time, he simply signed the completed June 8, 2006 Form U4 without carefully reading the questions. (Tr. p. 875).

On June 8, 2006, FINRA issued three letters to Maxim indicating some deficiencies in Respondent's Form U4. (CX-12A, pp. 22, 24, 28). Maxim revised Respondent's Form U4 to address the deficiencies, *i.e.*, providing updates on prior disclosures, and gave the amended Form U4 to Respondent for him to review. (Tr. pp. 260-261). On June 14, 2006, Respondent executed the amended Form U4. (CX-12A, pp. 34-39; CX-13). The Maxim amended Form U4 also did not disclose the IRS tax liens. (CX-13, pp. 11, 24). Again, Respondent testified credibly that he did not carefully read the Form U4 but simply signed the document that was presented. (Tr. pp. 998, 1001-1002). On June 15, 2006, FINRA approved Respondent's registrations as a general securities principal and general securities representative with Maxim. (CX-1, p. 10).

On June 16, 2006, at Respondent's request, Maxim amended Respondent's Form U4 to add five state registrations. (CX-13A, pp. 1, 5; Tr. pp. 294-295, 323). However, Maxim did not provide Respondent with a copy of the amended Form U4 before submitting it to FINRA, and Respondent never signed it. (Tr. p. 294). Subsequently, on June 26, 2006, Respondent terminated his association with Maxim.[21] (Tr. pp. 900, 905-906; CX-1, p. 10).

On June 26, 2006, Respondent executed a handwritten Form U4 for Joseph Stevens without carefully reading and leaving all the questions blank, including Question 14M regarding the existence of judgments or liens. (CX-14A, pp. 2-29; Tr. pp. 880-881). Again, Respondent credibly testified that he mentioned his IRS debt to his potential employer, but did not disclose any liens. (Tr. pp. 841, 894-895). On June 26, 2006, Joseph Stevens electronically filed a completed Form U4 for Respondent. (CX-16A, pp. 10-35). FINRA immediately approved Respondent's registrations as a general securities principal and general securities representative with Joseph Stevens.[22] (CX-1, p. 7).

Subsequently, at Respondent's request, Joseph Stevens filed amendments to Respondent's Joseph Stevens Form U4 dated June 27, 2006, July 5, 2006, July 11, 2006, September 21, 2006, and September 25, 2006. (CX-1, p. 50; CX-15; CX-15A; CX-15B; CX-15C; CX-15D; Tr. p. 381). None of the new amendments were provided to Respondent for his signature or review. (Tr. pp. 487, 496). Neither the Joseph Stevens Form U4 nor any of the five Form U4 amendments disclosed Respondent's IRS tax liens.

[21] Respondent did not engage in any securities business while at Maxim. (Tr. p. 910).

[22] In connection with the hiring of Respondent, Joseph Stevens instituted a six-month period of heightened supervision on Respondent. (Tr. pp. 390, 488).

(CX-15, pp. 11, 23; CX-15A, pp. 11, 23; CX-15B, pp. 11, 23; CX-15C, pp. 11, 23; CX-15D, pp. 11, 23; CX-16A, pp. 20, 35).

Following his FINRA on-the-record interview, Respondent filed an amendment to his Form U4 with Joseph Stevens on November 16, 2006, disclosing that there was an IRS tax lien against his property.[23] (CX-1, pp. 31-32). If Respondent had reviewed the county court records, he would have discovered that there were actually two IRS tax liens on his property. (CX-19; CX-20).

2. Respondent Violated Conduct Rule 2110 and IM-1000-1

Count two of the Complaint alleges that Respondent willfully failed to: (i) amend his Form U4 with Grayson Financial to disclose that the IRS had imposed a $313,997.82 lien on Respondent for unpaid federal taxes; (ii) disclose the IRS tax lien on a Form U4 filed on June 8, 2006, via Maxim; (iii) disclose the IRS tax lien on two Form U4 amendments filed on June 14, 2006 and June 16, 2006, via Maxim; (iv) disclose the IRS tax lien on a Form U4 filed on June 26, 2006, via Joseph Stevens; and (v) disclose the IRS tax lien on five Form U4 amendments filed from June 27, 2006 to September 25, 2006, via Joseph Stevens.

IM-1000-1 provides that an incomplete or inaccurate filing of information with FINRA by a registered representative "may be deemed to be conduct inconsistent with just and equitable principles of trade." Accordingly, Rule 2110 and IM-1000-1 require associated persons to answer the questions of the Form U4 accurately and fully. It is well

[23] Relying on information on the May 1, 2006 Garnishment Order, Respondent filed a November 16, 2006 Form U4 amendment disclosing that the IRS had imposed a tax lien on his property in the amount of $313.997.82. (CX-4, p. 1; CX-1, pp. 31-32). At about the same time, Respondent's real estate agent confirmed the existence of a tax lien on his property. (Tr. p. 702).

established that the accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals."[24]

Although both Respondent, in his November 16, 2006 Form U4 amendment, and Enforcement, in the Complaint, made reference to a single IRS tax lien imposed on Respondent's property in April 2006, in the amount of $313,997.82, in April 2006 the amount of the IRS tax lien on the property was $105,244.41. (CX-3, p. 1).

Subsequently, in addition to the Notice of Lien filed for the 2003 unpaid taxes on April 25, 2006, in Freehold, NJ, the IRS prepared an $184,957.39 tax lien against Respondent in connection with his unpaid taxes for 2004, which was filed on May 23, 2006, in Freehold, NJ. (CX-19; CX-20). By the end of May 2006, there were two IRS tax liens on Respondent's property, which totaled $290,201.80. (*Id.*). Respondent does not dispute that between April 2006 and May 2006, the IRS issued two tax liens against him. Respondent does dispute the time that he learned of the existence of the tax liens.

The Hearing Panel finds that Respondent had notice of the April 25, 2006 tax lien on or about May 5, 2006, after he received the Garnishment Order and notice of the levy on his bank account, which referred to a lien. Article V, Section 2(c) of the FINRA By-Laws requires that associated persons keep their Form U4s "current at all times," and file amendments to their Form U4s "not later than 30 days after learning of the factor or circumstances giving rise to the amendment." Given the uncertainty as to precisely when in May 2006 Respondent received notice of the April 2006 tax lien, the Hearing Panel

[24] *See e.g.*, *Douglas J. Toth*, Exch. Act Rel. No. 58,074, 2008 SEC LEXIS 1520 (July 1, 2008); *see also Thomas R. Alton*, 52 SEC 380, 382 (1995), *aff'd* 105 F.3d 664 (9th Cir. 1996).

does not find a violation based on Respondent's failure to update his Grayson Financial Form U4 before he resigned from the Firm on June 6, 2008. (Tr. p. 533).

Respondent does not dispute that his June 8, 2006 Maxim Form U4 and its subsequent amendments, as well as the June 26, 2006 Joseph Stevens Form U4 and its amendments, incorrectly reflected a "no" answer to Question 14M which asked, "Do you have any unsatisfied judgments or liens against you?"

Respondent testified that he generally disclosed his tax problems to the staff of Maxim and Joseph Stevens and relied on their compliance officers to advise him if there were any disclosure issues. (Tr. pp. 840, 894, 916, 924, 1001). As a registered representative, however, Respondent "is responsible for his actions and cannot shift that responsibility to the firm or his supervisors."[25] Respondent was on notice that he had not just "tax problems," but tax liens imposed on his property. Respondent was required to disclose judgments and liens on his Form U4.

"The violation of providing false information to [FINRA] requires only that the complainant prove that the information was false."[26] Respondent should have read and answered "yes" to Question 14M when he signed the Form U4s for Maxim and Joseph Stevens. In addition, Respondent agreed to and authorized the filing of the Form U4 amendments, which also failed to disclose the tax liens on his property. The primary responsibility for maintaining the accuracy of a Form U4 lies with the registered representative.[27]

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[25] *See Rafael Pinchas*, Exch. Act Rel. No. 41,816, 1999 SEC LEXIS 1754, at *14 (Sept. 1, 1999).

[26] *Dist. Bus. Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37, at *7 (NAC Aug. 17, 1998).

[27] *See Toth*, 2008 SEC LEXIS 1520 (finding a violation when respondent failed to review and correct inaccurate information on the Form U4 that was submitted on his behalf).

Accordingly, the Hearing Panel finds that Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to disclose his tax liens on the Maxim and Joseph Stevens Form U4s.

3. Respondent's Failure to Disclose His Tax Liens was Willful

Enforcement argued that Respondent's failure to disclose his tax liens was willful. Willfulness is not required to establish the violation charged; as explained above, it is enough that Respondent failed to disclose his tax liens on his Form U4s. A finding that Respondent's failure was willful, however, would have serious collateral consequences. Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact which is required to be stated" in that application is statutorily disqualified from participating in the securities industry.[28] Article III, Section 4 of FINRA's By-Laws, as amended on July 30, 2007, gives effect to this by providing that a person is subject to a "disqualification" with respect to association with a member firm if such person is subject to any "statutory

[28] Under Article III, Section 3(b) of FINRA's By-Laws, a "statutorily disqualified" person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for relief from the statutory disqualification under Article III, Section 3(d) of the By-Laws.

disqualification" as such term is defined in the Securities Exchange Act of 1934.[29]

To find that Respondent's failure to disclose his tax liens was willful, the Hearing Panel need not find that Respondent intended to violate a specific rule or law; rather, the Hearing Panel need only find that Respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper."[30]

Enforcement asserts that Respondent's failure to disclose his tax liens was willful because he knew or should have known that it was wrong to fail to disclose them.

Respondent argued that he did not realize that there was a tax lien on his property until November 2006; the Hearing Panel did not find Respondent's testimony credible. Respondent should have known at least by the end of May 2006 that he had a tax lien on his property based on the Garnishment Order, his knowledge that the IRS had placed a levy on his bank account, and receipt of the Notice of Lien. The Hearing Panel did find credible Respondent's testimony that he did not read the Form U4s and did not remember that the form required disclosure of judgments or liens. Respondent, however, had the obligation to read and comply with the requirements of Form U4. The Hearing Panel finds that the tax liens are material facts for purposes of disclosure on the Form U4.[31]

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[29] Former Article III, Section 4(f) of FINRA's By-Laws had essentially the same language as Section 15(b)(4)(A) of the Securities Exchange Act of 1934, stating that a person is subject to a "disqualification" if such person "has willfully made or caused to be made in any application … to become associated with a member … any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in such application … any material fact which is required to be stated therein."

[30] *Christopher LaPorte*, Exch. Act Rel. No. 39,171, 1997 SEC LEXIS 2058, at *8 n. 2 (Sept. 30, 1997); *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5 at *9-10 (NAC April 27, 2004).

[31] *Knight*, 2004 NASD Discip. LEXIS 5, at *13 (essentially all the information that is reportable on the Form U4 is material).

Accordingly, Respondent knew or should have known that his failure to disclose his tax liens on his Form U4s was wrong, and therefore his failure to disclose was willful.[32]

III. SANCTIONS

A. Respondent Engaged in Unethical Behavior

In connection with the first count of the Complaint, engaging in unethical conduct in violation of Conduct Rule 2110, Enforcement acknowledged that there are no directly applicable sanction guidelines for Respondent's violation.

Enforcement argued, however, that Respondent's misconduct was factually comparable to a representative's disregard of a FINRA suspension order. Enforcement argued that, in disregarding a federal order, Respondent exhibited an inherent disregard for governmental authority and demonstrated an unwillingness to comply with a similar legal and regulatory process in the future.[33] In addition, arguing that Respondent's conduct was egregious and that there was no evidence of any mitigating factors, Enforcement recommended that Respondent be barred in a principal capacity, suspended for six months in all capacities, and fined $5,000. On the other hand, Respondent argued that his actions were not egregious and recommended that he be suspended for two years in a principal capacity and be required to requalify as principal.

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[32] Because the Hearing Panel finds that Respondent willfully failed to state on his Form U4 material facts required to be stated therein, Respondent is deemed statutorily disqualified pursuant to Article III, Section 4 of the FINRA By-Laws and Section 3(a)(39)(F) of the Securities Exchange Act of 1934. Under Article III, Section 3(b) of FINRA's By-Laws, a "statutorily disqualified" person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for relief from the statutory disqualification under Article III, Section 3(d) of the By-Laws.

[33] *See Dep't of Enforcement v. Usher*, No. C3A980069, 2000 NASD Discip. LEXIS 5 (NAC Apr. 18, 2000) (imposing a bar in a principal capacity and a $25,000 fine against respondent who continued conducting a securities business after he was suspended for failing to pay an arbitration award).

The relevant general principles that the Hearing Panel considered included: (i) whether the respondent engaged in numerous acts and/or a pattern of misconduct; (ii) whether the respondent engaged in the misconduct over an extended period of time; (iii) whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated; and (iv) whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.

The Hearing Panel finds that: (i) Respondent's action did not constitute a pattern of misconduct, but was the result of the enormous pressure that Respondent was subject to at the time; (ii) his misconduct did not occur over an extended period of time; and (iii) Respondent advised the IRS agent of his misconduct. However, the Hearing Panel does find that Respondent made an affirmative decision to use his position as a principal of the Firm to act unethically by attempting to evade the Garnishment Order, and redirecting commissions to a non-registered person.

Accordingly, the Hearing Panel bars Respondent from associating with any FINRA member in his capacity as a principal, suspends him for three months from associating with any FINRA member in all capacities, and fines him $5,000.

B. Respondent Failed to Disclose His Tax Liens

For filing a false, misleading, or inaccurate Form U4, the *FINRA Sanction Guidelines* recommend a fine ranging from $2,500 to $50,000, as well as consideration of

a five to 30 business-day suspension in all capacities.[34] In egregious cases, such as those involving habitual misconduct, the *Guidelines* suggest that a longer suspension of up to two years, and possibly a bar, may be appropriate.[35]

A Form U4 is fundamental to the business and integrity of the securities industry. It is "used by all the self-regulatory organizations, including [FINRA], state regulators, and broker-dealers to monitor and determine the fitness of securities professionals,"[36] and "serves as a vital screening device for hiring firms and [FINRA] against individuals with 'suspect history.'"[37] "The candor and forthrightness of applicants is critical to the effectiveness of this screening process."[38]

The *Guidelines* suggest three principal considerations in determining sanctions: (1) the nature and significance of information at issue; (2) whether the omission resulted in a statutorily disqualified person becoming associated with a firm; and (3) whether the misconduct harmed a registered person, a firm, or anyone else.[39] Relevant general considerations include: (1) whether the misconduct occurred over an extended period of time; and (2) whether the misconduct was intentional.[40]

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[34] *FINRA Sanction Guidelines*, p. 73 (2007), available at http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

[35] *Id.* at 74.

[36] *Rosario R. Ruggiero*, Exch. Act Rel. No. 37,070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

[37] *Dist. Bus Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37, at *8 (NAC Aug. 17, 1998). *See also, e.g., Thomas R. Alton*, Exch. Act Rel. No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995).

[38] *Alton*, 1995 SEC LEXIS 1975, at *4. *See also, e.g., Dist. Bus. Conduct Comm. v. Perez*, No. C10950077, 1996 NASD Discip. LEXIS 51, at *7 (NAC Nov. 12, 1996) ("Full and accurate disclosures on a Form U4 are critical to the securities industry because member firms must be able to assess properly whether an individual should be employed, and, if so, subject to enhanced supervision.").

[39] *Guidelines* at 73 (2007).

[40] *Id.* at 6-7.

Enforcement requested that Respondent be suspended in all capacities for one year and fined $10,000 for his failure to disclose his tax liens. Respondent argued that no further sanctions should be imposed, but if necessary, sanctions should not exceed a thirty-day suspension and a $3,000 fine.

The Hearing Panel, in looking at the principal and general considerations, concluded that Respondent's failure to disclose the tax liens did not cause injury to his Firm, customers, or other parties. Nor did the liens disqualify him from associating with a FINRA member.

However, the Hearing Panel did find that there were a number of aggravating factors. First, the existence of substantial tax liens is significant information because it may call into question a registered person's ability to handle his own finances, which may also raise questions about his competence and ability to handle customers' finances as a securities professional, thereby impacting a firm's hiring decision or its decision to implement heightened supervision.[41] In addition, the existence of substantial tax liens, coupled with the IRS's efforts to enforce the liens, may induce a registered person to engage in misconduct. Indeed, that is precisely what occurred at Grayson Financial when Respondent directed the payment of his commissions to his wife in order to avoid the Garnishment Order.

Second, Respondent had three separate and clear opportunities to disclose the tax liens: (i) when he signed the Maxim Form U4; (ii) when he signed the Maxim Form U4 amendment to update his other disclosure items; and (iii) when he signed the Joseph

[41] Respondent did not engage in any business at Maxim and he was subject to six months of heightened supervision at Joseph Stevens.

Stevens Form U4. Yet, all three times, he failed to read the Form U4 questions carefully, which was reckless.

After careful consideration of these factors, the Hearing Panel finds that the appropriate remedial sanction in this case is a concurrent suspension of three months in all capacities and a fine of $5,000 to impress upon Respondent the seriousness of his failures and the importance of Form U4 applications to the integrity of the securities industry.[42]

IV. CONCLUSION

Respondent Joseph William Hagan is barred from associating with any FINRA member firm in a principal capacity, suspended for three months in all capacities, and fined $5,000 for violating Conduct Rule 2110 by acting unethically when he intentionally caused his Firm to pay his commissions to his spouse, an unregistered person, in an attempt to avoid an IRS garnishment order.

Respondent is concurrently suspended from associating with any FINRA member firm in all capacities for three months and fined $5,000 for violating Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his tax liens on his Form U4s.

Respondent is also assessed Hearing costs in the total amount of $8,406.90, consisting of a $750 administrative fee and a $7,656.90 transcript fee.

The sanctions shall become effective on a date determined by FINRA, but not sooner than thirty days from the date this Decision become the final disciplinary action of FINRA, except that, if this Decision becomes the final disciplinary action of FINRA, Respondent's suspension in all capacities shall commence at the opening of business on

February 17, 2009 and conclude on May 16, 2009, and the principal bar shall become effective immediately.[43]

HEARING PANEL.

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By: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
December 19, 2008

Copies to:

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[42] *See Dep't of Enforcement v. Mathis*, No. C10040052 (NAC Dec. 12, 2008) (suspending Respondent for three months and fining him $100,000 for willful failure to disclose five tax liens on Form U4s).

[43] The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.